IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

MFA.No. 89 of 1998(B)

OPMV.1443/1989 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
.....

APPELLANT - PETITIONER:

ADIMA, AGED 57, W/O. KOCHOLE, KERIYIL IRIMPANAM, THIRUVAMKULAM VILLAGE, KANAYANNUR TALUK.

BY ADV. SRI.VARGHESE C.KURIAKOSE

RESPONDENTS - RESPONDENTS:
----

1. **SAHAJAN, S/O. PRABHAKARAN, CHENMAIKATTU VEEDU, UDAYAMPEROOR.**

2. **K.C. ABRAHAM, S/O. CHACKO, KAMALASSERY VEEDU, KARINGACHIRA, IRIMPANAM.**

3. **THE UNITED INDIA INSURANCE CO. LTD., BRANCH OFFICE, VIJAYA ESTATE, OPP. MUNICIPAL OFFICE, TRIPUNITHURA.**

4. **SUNNY, S/O. VARGHESE, KARAPARAMBIL HOUSE, KARINGACHIRA, IRIMPANAM.**

5. **P.C. KUTTAN, S/O. CHITHI, KORIYIL, IRIMPANAM.**

BY ADV. SRI.PMM.NAJEEB KHAN R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.F.A.No.89 of 1998

Dated, this the 6th day of November, 2007

JUDGMENT

Petitioner in O.P.(MV) No.1443/1999 on the file of the Additional Motor Accidents Claims Tribunal, Ernakulam is the appellant. According to the appellant she sustained injuries in a motor vehicle accident. She filed a petition claiming compensation impleading the owner, driver and also the the fifth respondent who was stated to be the porter. The case put forward by the appellant is as follows: She was a coolie and pot herbs vendor. She boarded into the bus bearing registration No.KBE 736 from her native place. She was carrying a bundle of pot herbs. She was told that the same is to kept on the top of the bus. Accordingly that that loaded on the top of the bus. When she reached Menaka Bus Stop she alighted from the bus and was waiting for porter to unload the bundle kept on the top of the bus. The fifth respondent climbed on the top of the bus and unloaded the pot herbs. The bundle of pot herbs fell on the neck of the appellant and she sustained serious injuries. It was averred that the accident occurred due to the negligence of respondents 1 and 4. First respondent is the driver and the second respondent is the owner. Respondents 1 and 4 filed a joint written statement contending that the material averments in the Original Petition were not correct. Appellant did not sustain any injury in a motor vehicle accident and no amount was spent for treatment. She sustained no disability also. No

accident involving a motor vehicle had taken place. Hence the Original Petition is not maintainable before the Motor Accidents Claims Tribunal. Third respondent insurer filed a written statement contending that Original Petition was not maintainable. It was contended that even according to the appellant the accident occurred due to the negligence of the fifth respondent who had nothing to day with plying of the vehicle and as such the insurer cannot be saddled with the liability to indemnify for any wrongful act committed by a stranger. It was admitted that the vehicle was covered with valid policy of insurance and driver was having valid driving licence. The fifth respondent filed a written statement contending that he did not unload the pot herbs but it was the son of the appellant and the same accidentally fell on the neck of the appellant and she sustained injuries. Tribunal found that appellant is entitled to get compensation for the injuries sustained and worked out the same at Rs.6,030.69. Tribunal found that the Original Petition is maintainable. But the Original Petition was dismissed on the ground that there was variance between the pleadings and proof and the appellant failed to establish that the accident took place in the manner alleged.

2. The accident occurred on 15.2.1989. A reading of Section 166 of the Motor Vehicles Act, 1988 makes it clear that the party can approach the Tribunal claiming compensation in respect of accidents involving death or bodily injury to persons arising out of use of motor vehicles or damage to any property. Respondents have no case that no goods can be carried in a passenger vehicle.

Every public has a right to travel in such a bus by paying ticket fare. The vehicle involved in this case is a stage carriage bus having permit to ply it as a private bus on the road. There is no law which says that a passenger cannot carry any goods in a passenger vehicle. If a party wants to carry goods she/he should have pay extra charge for the same. There may be articles which can be kept inside the bus and there may be articles which may not be possible to keep inside the bus because of its voluminous size and such articles will have to be kept on the top of the bus. In this particular case the appellant is a lady aged 48 years and no one can expect her to climb on the top of the bus and unload the article. Naturally she will have to seek assistance of somebody who was able to do so. According to the appellant the fifth respondent was a porter of the bus. It is very pertinent to note that the fifth respondent admitted the accident but the only contention raised by him was that it was the son of the appellant who climbed on the top of the bus and unloaded the article. The son of the appellant was examined as PW3. There is nothing in his evidence to indicate that it was he who climbed on the top of the bus and unloaded the article. According to the fifth respondent he was an approved porter who was authorised to load and unload articles into bus. So the materials on record show that the articles unloaded from the top of the bus fell on the neck of the petitioner and she sustained injuries.

3. The next ground is that the appellant failed to prove her case. Appellant was a coolie and and a pot herbs vendor and on the fatal day she

alighted from the bus in Menaka Bus Stop and she sought the help of a porter to unload the spinach carried on the top of the bus. Appellant examined PWs 2 and 3 to prove the incident in addition to her own evidence as PW1. The evidence of PW1 shows that spinach which was carried on the top of the bus fell on the neck of the appellant when it was being unloaded. I do not find any reason to disbelieve the oral evidence adduced by the appellant. I hold that the accident occurred while the porter made an attempt to unload the spinach which was carried on the top of the bus. I also hold that the owner and driver of the bus should have taken special care while the articles kept on the top of the bus are unloaded. So I hold that the owner of the vehicle is vicariously liable to the act of the porter.

4. Now I shall consider the quantum of compensation to be awarded. The appellant claimed an amount Rs.500/- for transport to hospital and out of that Rs.150/- was awarded. She claimed Rs.1,000/- for extra nourishment. No amount was awarded towards extra nourishment. She also claimed an amount of Rs.10,000/- towards treatment expenses. But the Tribunal awarded only Rs.880.69 paise. Though the appellant claimed Rs.50,000/- as compensation towards pain and suffering the Tribunal awarded only Rs.2,000/- towards pain and suffering. The appellant was awarded Rs.3,000/-as loss of earning power. So the Tribunal worked out a total compensation of Rs.6,030.69 paise. The compensation awarded by the Tribunal is very low. Tribunal ought to have awarded an amount of Rs.500/- for transport to hospital and Rs.1,000/- for extra nourishment.

Tribunal ought to have awarded at least Rs.5,000/- for treatment expenses and Rs.5,500/- towards pain and suffering. So the total compensation will come to Rs.15,000/- which will carry interest at the rate of 6%. It was admitted that the vehicle was covered with valid policy of insurance. So the insurer is liable to pay the compensation amount.

In the result, appeal is allowed in part. The award passed by the Tribunal dismissing O.P.(MV) No.1443/1989 is hereby set aside. An award is passed in favour of the appellant authorising her to recover an amount of Rs.15,000/- with interest at the rate of 6% from the date petition till the date of realisation. Third respondent insurer is directed to deposit the compensation awarded in this case. On deposit the appellant can withdraw the entire amount.

K. PADMANABHAN NAIR,
JUDGE.

cks

K.PADMANABHAN NAIR, J.

M.F.A.No.89 of 1998

JUDGMENT

6th November, 2007.